NO. 14-03-01421-CR
NO. 14-03-01423-CR

IN THE COURT OF APPEALS

FOR THE

FOURTEENTH DISTRICT OF TEXAS

HOUSTON, TEXAS

EX PARTE ROBERT DURST, APPELLANT

VS.

THE STATE OF TEXAS, APPELLEE

BRIEF FOR THE STATE OF TEXAS

CAUSE NUMBERS 01CR1900 AND 01CR2007
IN THE 212TH JUDICIAL DISTRICT COURT
OF GALVESTON COUNTY, TEXAS

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PETITIONER'S FORTH ISSUE IS NOT PROPERLY BEFORE THIS COURT UNDER THE WRIT OF HABEAS CORPUS. THIS COMPLAINT WAS NOT ASSERTED AT TRIAL COURT AND THEREFORE PRESENTS NOTHING FOR REVIEW. FURTHER, PETITIONER FAILS TO SUPPORT THIS ISSUE WITH ANY AUTHORITY OR ARGUMENT AND THEREFORE HAS WAIVED ANY COMPLAINT. NOTHING IN THE STATUTE FOR BAIL JUMPING AND FAILURE TO APPEAR PROHIBITS PETITIONER FROM BEING INDICTMENT ON TWO DIFFERENT INDICTMENTS WHEN PROBABLE CAUSE EXISTS THAT PETITIONER'S CONDUCT MEETS THE ELEMENTS OF THE PENAL CODE STATUTE.

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LIST OF PARTIES

Presiding Judge	Honorable Susan Criss
Appellant	Robert Durst
Appellee	State of Texas
Attorney for Petitioner (Trial and Appeal)	Mr. Dick DeGuerin Mr. Michael Ramsey Mr. Chip Lewis Houston, Texas
Attorney for State (Trial and Appeal)	Mr. Kurt Sistrunk Mr. Joel H. Bennett Galveston, Texas

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NO. 14-039-01421-CR
NO. 14-039-01423-CR

IN THE

COURT OF APPEALS

FOR THE

FOURTEENTH DISTRICT OF TEXAS

HOUSTON, TEXAS

EX PARTE ROBERT DURST, Appellant

v.

THE STATE OF TEXAS, Appellee

Appealed from the 212TH Judicial District Court
of Galveston County, Texas
Cause Nos. 01CR1900 and 01CR2007

BRIEF FOR THE STATE

TO THE HONORABLE COURT OF APPEALS:

Now comes Kurt Sistrunk, Criminal District Attorney for Galveston County, Texas, and files this brief for the State of Texas.

STATEMENT OF THE CASE

Appellant is charge in two different indictments with Bail Jumping and Failure to Appear, alleged to have been committed on October 16, 2001 and October 25, 2001. C.R.I–2-3, C.R.II–2-3. Judge Frank Carmona set "No bond" in cause number 01CR1900 on October 16, 2001. C.R.I–3. Judge Carmona also set "No bond" in cause number 01CR2007 on October 25, 2001. C.R.II–3. On December 6, 2001, the trial court set bond at one million dollars ($1,000,000) on cause number 01CR1900. C.R.I–4. The State's Motion for No Bond was granted on December 6, 2001 and again on January 31, 2002 in cause number 01CR2007. C.R.II–4. On December 3, 2003 after a bond hearing, the trial court set the bond at one billion dollars ($1,000,000,000) in cause number 01CR1900. C.R.I–5. Also on December 3, 2003 the hearing, the trial court changed Petitioner's bond from "No bond" and set bond at one billion dollars ($1,000,000,000) in cause number 01CR2007. C.R.II–5. Petitioner filed Writs of Habeas Corpus on December 9, 2003 in both cases. C.R.I–313, C.R.II–233. These writs were heard and denied on December 18, 2003. C.R.I–327, C.R.II–248. Petitioner filed Notice of Appeal on December 18, 2003 in both cases.

STATE'S REPLY TO PETITIONER'S FIRST, SECOND, AND THIRD ISSUES

PETITIONER HAS FAILED TO CARRY HIS BURDEN TO PROVE THAT THE TRIAL COURT ERRED IN SETTING BAIL. THE TRIAL COURT HAD BEFORE HER MANY FACTS RELEVANT TO THE ISSUE OF BAIL THAT ARE NOT BEFORE THE COURT OF APPEALS. WITHOUT ALL THE FACTS BEFORE THE TRIAL COURT, THE COURT OF APPEALS IS NOT IN A POSITION TO ACCURATELY DETERMINE WHETHER OR NOT THE TRIAL COURT ABUSED HER DISCRETION IN SETTING BAIL.

STATEMENT OF FACTS

At the bond hearing on December 3, 2003, Petitioner admitted that the trial court was aware of his financial condition. "You know his financial condition. His financial condition is he's got more money than he could ever spend." R.R.I—11. The trial court responded, "I think Mr. Ramsey said he was a zillionaire." R.R.I—12. Petitioner repeated, "He has more money than he could ever spend." R.R.I—12.

Petitioner stated that bail should be set to assure attendance and not to punish him. R.R.I—12-13. The trial court responded that she had reviewed the cases provided by Petitioner. R.R.I—13. She stated there are a number of other factors for the trial court to consider: ability to make bond, prior offenses, ties to the community, safety obligations to the community, the facts of the event from which he ran, whether he was found guilty or not guilty, and evidence of deceitfulness. R.R.I—13. The State pointed out to the trial court that during the murder trial, Petitioner argued that he "has the ability to go anywhere in the world he wants, to go to a non-extradition country where he can live out the remainder of his life and living off his own money." R.R.I—15. The State further reminded the trial court of the taped phone calls from jail where Petitioner discussed having money outside the United States; assets and preparations he made so he could live the kind of life he chose. R.R.I—15. The State also argued the tapes show statements from Petitioner where he had thoughts about taking actions against other people, which

showed he was a danger to others. R.R.I—16. Petitioner admitted during trial that he had run all of his life. R.R.I—16.

The trial court expressed her concern that Petitioner would run. R.R.I—26. "One of the other things that concerns me is as you said all he's ever done is run, and in this instance him running from Galveston was based on his fear of being apprehended from this murder and having to face the consequences for that accusation, but his whole purpose in being in Galveston to begin with was that he was on the run. I mean, your whole defense was based on the fact that he ran...and that makes a flight of risk tremendous because his running didn't originate with being formally accused with a crime." R.R.I—26-27.

Petitioner admitted that he has no ties to the community. R.R.I—29. The trial court found, "This case is so unique and so different that what's happened on these other cases just bears no relation. This case is unique for a lot of reasons most of which were part of your defense." R.R.I—30. The trial court held, "[O]verall to me the two factors that always weigh foremost in my mind are going to be, number one, flight of risk (sic) versus showing up and number two, safety of the community if things go array (sic)." R.R.I—31. The trial court further held that the other factors are not in his favor; ties to the community, the underlying facts of the case from which he ran, evidence of a great deal of deceit, hiding evidence, disposal of the body, false identities, and Petitioner has "never not flown". R.R.I—32. According to the tapes which the trial court listened to,

Petitioner got married to become a fugitive, and a propensity to live in disguise. R.R.I—32.

The trial court was unsure whether she could deny bond and therefore she granted the same bond in both cases. R.R.I—32-33. Because of the evidence that she has heard about his finances, she set bond a one billion dollars in each case. R.R.I—33.

After a recess, Petitioner asked the trial court if she said one million. R.R.I—35. The trial court said, "Not one million. One billion with a B." R.R.I—35.

Petitioner filed a Writ of Habeas Corpus in both cases requesting bail be set at ten thousand ($10,000) dollars in each case. C.R.I—313, C.R.II—233.

At the hearing for this Writ of Habeas Corpus, the State asked the trial court to take judicial notice of all the proceedings held before the trial court which included two bond hearings prior to Petitioner's murder trial, the murder trial itself, and the bond hearing after the murder trial. R.R.II—3-4. Petitioner had no objection. R.R.II—4. The trial court held, "Then all of that is admitted and I'll consider that." R.R.II—4.

Petitioner called Ray Davis, who is employed by the Galveston County Sheriff's Department and is the secretary of the bail bond board. R.R.II—4-5. He testified that Gulf Coast Bail Bond has the largest deposit on file with the county. R.R.II—6. Their deposit is approximately two point two millions dollars. R.R.II—6. No bonding company can post a single bond for more than their deposit or in aggregate to ten times their deposit.

R.R.II—6. Mr. Davis testified that a person could post a cash bond. R.R.II—9. He testified that the ability to make bond is really based upon the person's net worth, not what bond a bonding company could make. R.R.II—10. He was also aware that the court could require only a cash bond and not allow a surety bond. R.R.II—10. Mr. Davis testified that the largest bond ever made by a Galveston County bonding company was one million dollars. R.R.II—12.

John Burns is a bail bondsman and has been in the business for 32 years. R.R.II—17. He is not aware of any bonding company in Texas that could post the two one-billion dollar bonds in these cases. R.R.II—23. Mr. Burns testified that he was familiar with the Durst case from what he read in the paper. R.R.II—23. He had not heard that Petitioner had testified that his family owns Times Square in New York City. R.R.II—23-24. He had not heard Petitioner testify that his family had owned it since it was farmland in the 1700's or 1800's. R.R.II—24. Mr. Burns testified that to make a bond for a person who skipped out on three hundred thousand dollars worth of bonds, that person would have to be either post full collateral or close to it. R.R.II—26. Mr. Burns testified that he would evaluate Mr. Durst as a low risk factor. R.R.II—28. He admitted that Mr. Durst has the ability to run. R.R.II—31.

Petitioner called Mr. Ed Hennessy, a lawyer. R.R.II—33. He testified that he was representing Petitioner in civil matters involving the estate and relatives of Morris Black. R.R.II—34.

Mr. Hennessy claimed to have investigated and learned what the status of Petitioner's finances. R.R.II–35. Petitioner is the beneficiary of two trusts set up by Petitioner's father. R.R.II–35. Mr. Durst does not have the ability to reach the corpus of the trust. R.R.II–36. Mr. Hennessy also testified that he is familiar with Petitioner's assets and property. R.R.II–37. Petitioner has a million dollar annuity. R.R.II–38. He does not know how much the annuity pays Petitioner, only the face value of the annuity. R.R.II–38. He is unaware of any property that Petitioner has outside the trust at this time. R.R.II–38. Mr. Hennessy testified that Petitioner receives income out of one of the trusts. R.R.II–38. He testified that his "adjusted gross income was a little over four hundred thousand dollars" in 2002. R.R.II–38-39. In his opinion, he does not think Petitioner could post that type of bond. R.R.II–39. Petitioner could post either a fifty thousand dollar bond or cash bond. R.R.II–39.

On cross-examination, Mr. Hennessy was aware that Petitioner was able to produce three hundred thousand dollars overnight to post the previous bonds. R.R.II–40. Mr. Hennessy denied knowing that Petitioner or Petitioner's wife tried to withdraw one point eight million dollars in cash from one of many of Petitioner's accounts. R.R.II–40. He was aware that testimony in the murder case showed this fact. R.R.II–40. Mr. Hennessy also denied knowledge of Petitioner's attempts to hide his assets due to the civil suit. R.R.II–40. Mr. Hennessy also denied being consulted by Petitioner about hiding or investing money in Belize. R.R.II–

40-41. Petitioner had not shared with Mr. Hennessy that he had money stashed in South America. R.R.II—41. Mr. Hennessy was unaware if Petitioner had any offshore accounts. R.R.II—41. He was also unaware of any transfers he made to his wife to try to protect his assets. R.R.II—41. Mr. Hennessy had not heard the tapes of phone calls from North Hampton County Jail where Petitioner and his wife were discussing stashing money in Belize. R.R.II—42. Nor had he heard the tapes where they discussed the millions of dollars that they had stashed in South America. R.R.II—42-43. Mr. Hennessy was also unaware that Petitioner had withdrawn one million dollars from one of his many accounts about one month before Morris Black's death. R.R.II—43. Mr. Hennessy testified that he did not know what Petitioner's unadjusted gross income was in 2002. R.R.II—43. Mr. Hennessy was not aware of what Petitioner earned when he was employed by the Durst organization. R.R.II—43. Further, Mr. Hennessy was not aware of the fact that Petitioner testified that it was minuscule compared to what he got paid out of the trust. R.R.II—43-44. Mr. Hennessy testified that he did not know whether Petitioner owned a house in California or what happened to the proceeds if he sold it. R.R.II—44. Mr. Hennessy testified that he did not know whether Petitioner had a house in the Hamptons or any other houses in New York. R.R.II—44. Nor did he know about Petitioner's apartment in New York. R.R.II—44. Mr. Hennessy testified he had no earthly idea what the net worth of Petitioner was. R.R.II—44. Mr. Hennessy testified that Petitioner had between two to four

million dollars in liquid assets. R.R.II—44-45. Mr. Hennessy testified that he would be surprised that Petitioner said he had over seven million dollars in South America. R.R.II—45.

Petitioner objected that the State questioning the witness did not make it a fact. R.R.II—45. The trial court stated, "I believe he's coming from the taped phone conversations that I did listen to in hearings that were not in front of the jury where he had the conversations between his wife about all of their assets and the money in different places and several million dollars cash they had access to; worst case scenario that he didn't get any more money from the trust." R.R.II—45. Petitioner objected that it was not in the record and is not evidence. R.R.II—45. The trial court stated that it is evidence in numerous hearings that they had. R.R.II—45. They were admitted in more than one hearing. R.R.II—46. The trial court stated that they were considered in this case and they are part of what was admitted at the beginning of the writ hearing. R.R.II—46. The trial court specifically stated that she was considering them. R.R.II—46.

The trial court asked Mr. Hennessy about conversations between Petitioner and his wife where they discussed the fact they had four million dollars in real estate in homes they could sell and if he was aware of this fact. R.R.II—48. Mr. Hennessy testified that he was not. R.R.II—48. Mr. Hennessy testified that there was some discussion amongst the Durst family to buy Petitioner out of the trust. R.R.II—49. The trial court asked if the reported fifty-two million dollar figure was correct. R.R.II—

49. Mr. Hennessy testified that there were problems with the valuation of interest and the discussions never got that far. R.R.II—49.

During an exchange with Petitioner's counsel, the trial court stated some of her reasons for setting the bonds in these cases. R.R.II—65. The trial court focused on the fact that Petitioner has already run, Petitioner is "probably the wealthiest person in the criminal justice system of America", and he cut up a human body "as if he were a surgeon". R.R.II—65. The court further stated, "From your mouth, your mouth, and your mouth, everybody sitting at your table who either spoke and argued or testified all were unanimous that he has been on the run for a great deal of time from that situation [the disappearance of his wife and the investigation of the disappearance] regardless of whether it's true or not, and there's no reason to believe that situation has changed. This case has changed, but what's going on in New York—I haven't heard anything about Jeanenne Pirro coming up and saying, never mind Bobby, don't worry about it. That's still a factor. And if he ran before on that why would he not run now." R.R.II—66-67. She continued and specifically found, "But what it there is your guy's been on the run from that for a long time and I don't see any reason to think he's not going to continue to be if he's out." R.R.II—67. The trial court stated, "He set himself up to be a fugitive in his own words from that. Setting yourself up to be a fugitive does not make you a good risk factor." R.R.II—68.

The trial court specifically found, "Second of all one of the things that Mr. DeGuerin said was there has been no proof of what kind of bond he could make. Y'all have shown me that he could make a ten thousand dollar bond, shown me that he could make a fifty thousand dollar bond which is about the equivalent that somebody from the jail who is completely indigent coming over and asking me to let them out for a nickel and that is completely unreasonable. You have not, you have very carefully not put on evidence of what kind of bond he could make." R.R.II—72-73. Petitioner disagreed. R.R.II—73. The trial court continued, "You have shown me he can make a fifty thousand dollar bond. But you did not show me what his net worth was. You did not show me how much—You put a witness on who was very uninformed about many of the things about Mr. Durst's assets that we have learned in this trial, while listening to those tapes he's completely unaware of. A lot of what the assets are that he has had access to. So, there actually has not been evidence of what kind of bond he could make. To say that he could make a million dollar bond, you say, well, there's enough to make a logical jump that he's got the assets to make a million dollar bond. He's got the assets to make a lot more than a million dollar bond. That's very clear just listening to the—If you listen to the tapes of what he and his wife said they had if he got cut off from the trust fund completely and they liquidated their real estate assets and they cashed in their bank accounts what they had assets to right then and there he could make more than what has

been put on here. And I know that's not all the man has access to, not to mention the fact that he's got the money that we don't know what amounts of in the other countries in offshore accounts, that he was very clear in his own words and he talked about. So there actually have not been evidence of what he could make." R.R.II—73.

Petitioner argued that Mr. Hennessy said that Petitioner has liquid assets of two to four million dollars. R.R.II—74. The trial court responded, "Which is underestimating it based on—that contradicts his own words what he said on those tapes when he was in a Pennsylvania jail, and unless his wife has squandered all the money since he's been in jail there's still no reason to believe that he still doesn't have access to that. That was even when he discounted what he was spending on the defense of the case and the expenses of that. What he said in his own words is a lot more than what Mr. Hennessy says he has liquid assets of." R.R.II—74.

Petitioner replied, "The evidence in this case before Your Honor is liquid assets between two and four million dollars. What's spent is spent." R.R.II—74. The court stated, "I haven't heard what's spent. I don't know from that seven million dollars that he had access to liquidated, I haven't heard what's spent of that. Originally, when you talked about money on his defense, that would be—I haven't heard, so I'm not going to sit here and guess what's been spent and what's not been spent and whether he emptied the accounts, whether he or his wife have emptied the

accounts in other countries, I don't know. So there is this big question of what he has and what he doesn't have, and I haven't heard evidence of how much money this man can put up for a bond. I could set the bond at five hundred dollars, yes, he could make it. He could do ten thousand, he could do 50 thousand. You didn't have to have a hearing for that. I mean, that was no brainer. I knew that before the trial ever started, but what he could make you actually have not put evidence on what he could make." R.R.II—74-75.

SUMMARY OF ARGUMENT

Petitioner has the burden to prove that the bond set by the trial court is excessive. The trial court specifically found that Petitioner failed to prove what kind of bond he could make. Additionally, Petitioner has failed to bring forth a complete record of everything considered by the trial court in determining the bond. Petitioner now asks this Court to find that the trial court erred in setting bond without providing this Court with all the facts and circumstances that the trial court was aware of and used in making her determination of the appropriate bond. The trial court specifically found that she did not believe that Petitioner, who had run all his life, had changed and that there was any reason to believe that he would not run again.

ARGUMENT AND AUTHORITIES

Petitioner has the burden of proof for reduction in bail to show that the bail set is excessive. "The burden is on the accused to prove that bail is excessive. *Ex parte Rubac, 611 S.W.2d 848,*

849 (Tex. Crim. App. 1981). We review the trial court's ruling for an abuse of discretion. *Id. at 850*." *Ex parte Beard, 92 S.W.3d 566, 568 (Tex. App.—Austin 2002, pet. ref'd)*.

"Bail is set for the primary purpose of securing the presence of the defendant at trial for the indicted offense. *Tex. Code Crim. Proc. Ann. art. 17.15(1) (Vernon Supp. 2000); Ex parte Rodriguez, 595 S.W.2d 549, 550 (Tex. Crim. App. 1980)*. Although bail should be set at a sufficiently high amount to secure compliance by the defendant with terms of the bail, it should not be used as an instrument of oppression, such as forcing the defendant to remain in jail pending trial. *Tex. Code Crim. Proc. Ann. art. 17.15(2) (Vernon Supp. 2000); See Ex parte Ivey, 594 S.W.2d 98, 99 (Tex. Crim. App. 1980)*. Further, while the accuser's ability to make a certain level of bail is considered, this factor is not determinative of the proper amount to be set. *Ex parte Charlesworth, 600 S.W.2d 316, 317 (Tex. Crim. App. 1980)*. In reviewing the amount of bail set by the trial court, we apply an abuse of discretion standard. *Ex parte Rubac, 611 S.W.2d 848, 850 (Tex. Crim. App. 1981)*. Appellant bears the burden of proof to establish that the bail set by the trial court is excessive. *Id. at 849*. Appellant must prove that the amount is excessive in accordance with certain factors:

(1) The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

(2) The power to require bail is not to be so used as to make it an instrument of oppression.

(3) The nature of the offense and the circumstances under which it was committed are to be considered.

(4) The ability to make bail is to be regarded, and proof may be taken upon this point.

(5) The future safety of a victim of the alleged offense and the community shall be considered.

Tex. Code Crim. Proc. Ann. art. 17.15 (Vernon Supp.2000).

"Other factors are also considered, including the possible length of sentence for the indicted offense; the nature and any aggravating factors of the offense; the petitioner's employment record, family and community ties, and length of residency in the jurisdiction; the petitioner's conformity with previous bond conditions; and the petitioner's prior criminal record. *Rubac, 611 S.W.2d at 849-50; Ex parte Hugg, 636 S.W.2d 862, 863 (Tex. App.—Amarillo 1982, pet. ref'd).*" *Ex parte Milburn, 8 S.W.3d 422, 424-425 (Tex. App.—Amarillo 1999, no pet.).*

"Of all the factors listed in article 17.15 and in Rubac, the Court of Criminal Appeals and this court have recognized that two factors should be given great weight when determining the amount of bail: the nature of the offense and the length of the sentence. *See Rubac, 611 S.W.2d at 849; Hughes v. State, 843 S.W.2d 236, 237 (Tex.App.--Houston [14th Dist.] 1992, no pet.).*" *Aviles v. State, 26 S.W.3d 696, 698—699 (Tex. App.—Houston [14TH Dist.] 2000, no pet.).*

"Though Rubac involved the setting of an appeal bond after conviction, several courts have applied the Rubac factors in the

review of cases involving pre-trial bail. *See Ex parte Emery, 970 S.W.2d 144, 145 (Tex. App.—Waco 1998, no pet.); Brown, 959 S.W.2d at 372; Smith v. State, 829 S.W.2d 885, 887 (Tex. App.—Houston [1st Dist.] 1992, pet. ref'd).* We, too, find the Rubac factors appropriate to review a trial court's pre-trial decision to set bail, to refuse to reduce bail, or to refuse to reduce it to the amount requested by the applicant." *Maldonado v. State, 999 S.W.2d 91, 93-94 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd).*

As in every case, the primary purpose of bail is to secure the presence of the defendant at trial for the indicted offense. In this case, the trial court specifically found and held that Petitioner had run all of his life and there was no reason to believe that has changed. The trial court specifically stated, "[Y]our guy's been on the run from that for a long time and I don't see any reason to think he's not going to continue to be if he's out." The trial court based this decision on the repeated statements of Petitioner and his counsel during trial that Petitioner had run all of his life. Further the trial court based her decision on the fact that Petitioner has set up multimillion dollar cash accounts in South American in order to be a fugitive. An additional factor before the trial court for her consideration, as shown in the bond hearing from December 3, was the statement by Petitioner's counsel during the murder trial that he (Petitioner) has the ability to go anywhere in the world he wants, to go to a non-extradition country where he can live out the remainder of his

life and living off his own money.

One of the questions before the trial court was what amount of bail would assure Petitioner's attendance at court? The court specifically found that there was no reason to believe that Petitioner would appear if released on bond. Further, the trial court was already aware from the evidence at trial that Petioner was not persuaded to appear for a murder trial with a two hundred fifty thousand dollar bond and a fifty thousand dollar bond on a Class B marijuana charge. Therefore, part of the decision of what bond would ensure Petitioner appear for trial is what amount of money would facilitate his appearance. The only evidence offered by Petitioner was his adjusted gross income. The trial court was already aware that he had access to numerous millions of dollars in accounts around the world. The trial court specifically stated that she would not speculate on what had happened to the millions of dollars in cash that Petitioner had. The only explanation offered by Petitioner was "What is spent is spent". As stated above, Petitioner bears the burden of proving that a particular bond is excessive. Petitioner was less than forth coming with information showing what his finances were and completely failed to explain what happened to millions of dollars he had placed in accounts outside the United States to facilitate his flight along with millions of dollars in accounts in the United States. These preparations were made prior to the incident that lead to Petitioner's murder trial.

Further, Petitioner is now asking this Court to find that the

trial court abused her discretion in setting bond in this case and if this Court so finds, to set a new bond. Petitioner asked this Court to do both of these things without providing this Court with a complete record. The trial court considered all the evidence from the two bond hearings prior to the murder trial, the murder trial itself and all the hearings surrounding the trial, namely the hearings concerning the phone calls Petitioner made from jail in Pennsylvania. These facts of which the trial court took judicial notice without objection were before the trial court when making her decision. Without a complete record and without a true showing of what ability Petitioner has to make a bond that would assure his attendance at trial, this Court is placed in a position to hold that the bonds set by the trial court are per se unreasonable and could never be justified under any circumstances. Absent such a holding by this Court, the record or in this case the absence of the record, does not allow this Court to make a finding that the trial court abused her discretion. Any Court or person is not in a position to say that another person or Court acted improperly when judging the actions on less information than what was available to the person or Court that took the action. It is not possible to say a person has erred when the person making the decision has more information than the person doing the review has, unless the action would be erroneous under any scenario.

Further, "The ability to make bail does not alone control the amount of bail. *Ex parte Charlesworth, 600 S.W.2d 316, 317 (Tex. Crim. App. 1980).*" *In re Hulin, 31 S.W.3d 754, 759 (Tex. App.—*

Houston [1ST Dist.] 2000, no pet.). If the ability to make a specified bond were determinative, then the trial court would be relegated to the position of setting bail as determined by the accused. *Ex parte Welch, 729 S.W.2d 306, 310 (Tex. App.-Dallas 1987, no pet.)*. The situation referenced in Welch is exactly the situation Petitioner attempted to put the trial court in by failing to demonstrate what kind of bond he could make. The trial court specifically found that Petitioner wholly failed to demonstrate what kind of bond he could make. The trial court further found that Petitioner called a witness to the stand that was extremely uninformed as to Petitioner's finances and assets. The trial court held that there was no reason to believe that Petitioner does not still have access to the millions of dollars he placed in accounts outside the United States.

Petitioner completely changed the amount of resources he claimed he had access to from the murder trial and the first bond hearing to the hearing on the writ of habeas corpus. Petitioner admitted at the December 3 hearing, "You know his financial condition. His financial condition is he's got more money than he could ever spend." The trial court, in referencing as statement by Petitioner's counsel during the murder trial, responded, "I think Mr. Ramsey said he was a zillionaire." Petitioner then repeated, "He has more money than he could ever spend." But, at the hearing on the writ of habeas corpus, Petitioner tried to convince the trial court that he would only be able to make a fifty thousand dollar bond. In fact, the only

evidence offered by Petitioner to show what bond he could make was that his ***adjusted*** gross income for 2003 was a little over four hundred thousand dollars. Petitioner's witness had no idea what Petitioner's unadjusted gross income was. In fact the trial court specifically stated, "You have not, you have very carefully not put on evidence of what kind of bond he could make."

It was only during cross-examination that evidence was presented that Petitioner had at least two to four million dollars in ***liquid*** assets; not total assets, just liquid assets. Further the witness presented by Petitioner who claimed to be familiar with Petitioner's finances and assets actually proved to be very uninformed as to Petitioner's true finances and assets. The trial court had heard and was aware of many more assets and resources available to Petitioner not only to make bond, but to facilitate flight. These resources could enable Petitioner, in the words of his own counsel, allow him to go anywhere in the world he wants, to go to a non-extradition country where he can live out the remainder of his life and living off his own money. These assets available to Petitioner are readily available to him and previously placed in areas to facilitate flight.

Additionally, the testimony concerning whether any bonding company could post a particular bond is not of any weight in this case. The case law has held although relevant to the issue, the amount of bond that a bondsman would or could post for an individual is not determinative of what bond would be reasonable under a given circumstance. This Courts decision in *Maldonado v.*

State, 999 S.W.2d 91 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) explains the law in this area:

> "Appellant presented evidence that he cannot make the bond set by the trial court. He presented testimony to the effect that he could raise funds sufficient to make bail in the amount of $100,000.00. The ability of an accused to post bail is a factor to be considered, but the inability to make the bail set by the trial court does not automatically render the bail excessive. *See Ex parte Vance, 608 S.W.2d 681, 683 (Tex. Crim. App. [Panel Op.] 1980); Ex parte Miller, 631 S.W.2d 825, 827 (Tex. App.—Fort Worth 1982, pet. ref'd); Brown, 959 S.W.2d at 372.* If the ability to make bond in a specified amount controlled, the role of the trial court in setting bond would be unnecessary and the accused would be able to set his own bond. *See Miller, 631 S.W.2d at 827.*
>
> "Appellant also presented evidence from a local bondsman that any bond over $500,000.00 was the equivalent of 'no bond.' The issue of whether bail can be set above the amount that any bondsman is able to post was recently addressed by the First Court of Appeals. *See Wright v. State, 976 S.W.2d 815 (Tex. App.—Houston [1st Dist.] 1998, no pet.).* We agree there is no reason not to treat the ability of a bail bondsman to post bond for the appellant as part of the general ability to make bail under article 17.15. *See id. at 820.* Like an accused's inability to post bond, the ability of a bail bondsman to post bond should not be a controlling

factor for the fixing of bail by the trial court. See id. We too 'decline to set an artificial cap on the amount a trial court can set as bail that is dependent on the ability or willingness of a bail bondsman to put up funds to write bonds in certain amounts.' *Id*.".

Maldonado, at 96.

Petitioner cites several cases in which million dollar bonds were held to be excessive. But, this very Court has approved a trial court's setting of a two point five million dollar bond in a drug case. "Although the bail amount is considerably high in this case, appellant has failed to demonstrate that the bail fixed by the trial court is excessive. When we consider the evidence relevant to the factors set out in article 17.15 and in Rubac, we hold the trial court did not abuse its discretion in setting bail in the amount of $2,500,000.00 and refusing to further reduce it. We overrule appellant's sole point of error and affirm the trial court's judgment.". *Maldonado v. State, 999 S.W.2d at 97.*

Other factors that the trial court considered include prior offenses, ties to the community, safety obligations to the community, the facts of the event from which he ran, whether he was found guilty or not guilty, and evidence of deceitfulness. Petitioner has no ties to the community, no family or friends, nor any roots in the area. Petitioner states in his brief that he has no criminal history. But the trial court has before her stated intentions and thoughts of Petitioner that he considered taking actions against other people, which demonstrate that he is a

potential danger to others. Again, this is evidence which was before the trial court that she properly consider in setting bond. The trial court further held that the other factors are not in his favor: the underlying facts of the case from which he ran, evidence of a great deal of deceit, hiding evidence, cutting up another human being "as if he were a surgeon", disposal of the body, false identities, and Petitioner has "never not flown".

Petitioner's First, Second, and Third Issues should be overruled.

STATE'S REPLY TO PETITIONER'S FOURTH ISSUE

PETITIONER'S FORTH ISSUE IS NOT PROPERLY BEFORE THIS COURT UNDER THE WRIT OF HABEAS CORPUS. THIS COMPLAINT WAS NOT ASSERTED AT TRIAL COURT AND THEREFORE PRESENTS NOTHING FOR REVIEW. FURTHER, PETITIONER FAILS TO SUPPORT THIS ISSUE WITH ANY AUTHORITY OR ARGUMENT AND THEREFORE HAS WAIVED ANY COMPLAINT. NOTHING IN THE STATUTE FOR BAIL JUMPING AND FAILURE TO APPEAR PROHIBITS PETITIONER FROM BEING INDICTMENT ON TWO DIFFERENT INDICTMENTS WHEN PROBABLE CAUSE EXISTS THAT PETITIONER'S CONDUCT MEETS THE ELEMENTS OF THE PENAL CODE STATUTE.

STATEMENT OF FACTS

No further statement of facts is necessary.

SUMMARY OF ARGUMENT

Petitioner's Forth Issue was not asserted at the trial court and therefore he presents nothing for review. Further, Petitioner failed to cite any authority or make any argument in support of his forth issue and therefore has waived any complaint.

ARGUMENT AND AUTHORITIES

To properly preserve an issue for appellate review, the issue must be presented at trial and obtain an adverse ruling. Martinez

v. State, 867 S.W.2d 30 (Tex. Crim. App. 30). This issue was neither presented at the trial court nor did Petitioner obtain a ruling on this issue.

Further, to present an issue on appeal, the issue must be supported by argument and authority. "[H]e cites no authority and presents no argument. Thus, nothing is preserved for appellate review. *Woods v. State, 569 S.W.2d 901 (Tex. Crim. App. 1978)."* *Smith v. State, 683 S.W.2d 393, 410 (Tex. Crim. App. 1984).* Petitioner has failed to present either and therefore has waived any alleged error.

Finally, "We have long held that when there is a valid statute or ordinance under which a prosecution may be brought, habeas corpus is generally not available before trial to test the sufficiency of the complaint, information, or indictment. But we have recognized certain exceptions to this rule. One exception is when the applicant alleges that the statute under which he or she is prosecuted is unconstitutional on its face; consequently, there is no valid statute and the charging instrument is void. Another exception is when the pleading, on its face, shows that the offense charged is barred by limitations. With both of these exceptions, the applicant is challenging the trial court's power to proceed." *Ex parte Weise, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001).*

Tex. Penal Code § 38.10 defines "Bail Jumping and Failure to Appear":

"A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release."

Both indictments set forth the required elements of the penal statute Bail Jumping and Failure to Appear. The presence or allegations in one indictment do not negate the elements and factual allegations made in the other indictment. Both are valid on their face and therefore proper. The offense of Bail Jumping and Failure to Appear is not dependent upon or does not require as an element of the offense bond forfeiture.

Petitioner's Fourth Issue should be overruled.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the State prays that the Judgment of the Trial Court be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Attorney for the State certifies a copy of the foregoing brief was mailed to Dick DeGuerin, Attorney for Petitioner, 1018 Preston Ave., 7th Floor, Houston, TX 77002 on this the 11th day of February, 2004.

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